

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 MCALLEN DIVISION

4 UNITED STATES OF AMERICA § CASE NOS. 7:19-CR-00522-1  
5 VERSUS § 7:19-CR-00522-3  
§ 7:19-CR-00522-4  
6 RICARDO QUINTANILLA (1) § MCALLEN, TEXAS  
ARTURO C. CUELLAR (3) § THURSDAY,  
7 DANIEL J. GARCIA (4) § APRIL 1, 2021  
§ 3:07 P.M. TO 3:58 P.M.

8 MOTION HEARING (VIA ZOOM)

9 BEFORE THE HONORABLE MICAELA ALVAREZ  
10 UNITED STATES DISTRICT JUDGE

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12 APPEARANCES: SEE NEXT PAGE  
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1                   MCALLEN, TEXAS; THURSDAY, APRIL 1, 2021; 3:07 P.M.

2                   THE COURT: Then let me turn to Case Number  
3 19-522, Ricardo Quintanilla, Arturo Cuellar, and Daniel  
4 Garcia.

5                   MR. LOPEZ: Good afternoon, Your Honor, Bobbie  
6 Lopez, Peter Nothstein, and Erica Waymack on behalf of the  
7 Government, Your Honor.

8                   (Pause)

9                   THE COURT: Can I get announcements from counsel  
10 then? Let's start with Mr. Quintanilla.

11                  THE CLERK: Mr. Pena's speaking but we can't hear.

12                  THE COURT: You may be on mute, Mr. Pena, because  
13 we're not hearing you.

14                  MR. PENA: (Indiscernible).

15                  THE COURT: I can hear some, but not -- it's --

16                  MR. PENA: Can you hear me now?

17                  THE COURT: That's better. Maybe a little bit  
18 more on the volume maybe.

19                  MR. PENA: Okay.

20                  THE COURT: All right. Okay, Mr. Pena, I think  
21 that's better. And I take it that is Mr. Quintanilla with  
22 you.

23                  MR. PENA: That's correct, Your Honor.

24                  THE COURT: All right. Okay. And then for  
25 Mr. Cuellar.

1                   MR. GARCIA: May it please the Court, Your Honor,  
2 Carlos Garcia on behalf of Mr. Cuellar. And I'm turning my  
3 camera now so the Court can see that Mr. Cuellar is present  
4 here in my office.

5                   THE COURT: All right, thank you.

6                   MR. GARCIA: Yes, Your Honor.

7                   THE COURT: And then --

8                   MR. VEGA: Judge, Oscar Vega on behalf of  
9 Mr. Danny Garcia. He's on, he's present, he's on. And  
10 Mr. Sully, who's also co-counsel, is also on, Judge.

11                  THE COURT: I did see Mr. Garcia there, yes, okay.  
12 So we have various matters that we need to address. I want  
13 to start here with the Government's motion to compel  
14 reciprocal discovery. I've looked through the filings from  
15 counsel as to the Government's position as well as at  
16 counsel's position.

17                  And unless somebody has something specific to add  
18 that is not covered in any of those filings, the Court is  
19 ready to proceed. And only if there is something specific  
20 to add that isn't covered already am I going to hear from  
21 counsel. So from the Government is there anything else  
22 specific to add?

23                  Mr. Lopez.

24                  MR. LOPEZ: No, Your Honor, I don't think there's  
25 anything else specific to add.

1 THE COURT: Okay. Mr. Pena.

2 MR. PENA: No, Your Honor.

3 THE COURT: Mr. Garcia.

4 MR. GARCIA: No, Your Honor.

5 THE COURT: Mr. Vega.

6 MR. VEGA: No, Your Honor.

7 THE COURT: All right. So I've gone through this  
8 as I've said, and I'll begin with just some general  
9 observations from the Court, and that is one I think -- and  
10 I think all counsel recognize this, that Rule 16 does not  
11 have a specific procedural manner in which a request for  
12 discovery must be made. The rule obviously does provide  
13 that upon request, but it doesn't say must be a formal  
14 request and doesn't say must be a written request, it  
15 doesn't say it must specifically reference Rule 16, it  
16 doesn't say it has to be filed with the Court. So there is  
17 no -- and the Court looked at some of the cases referenced  
18 here and I did not find any court that has ruled  
19 specifically about how it has to be done. All the courts  
20 have said it can be informal or formal.

21 So the Court in this case, I do agree with defense  
22 counsel that I did not find in going through everything any  
23 request that the Court would say is a formal, written  
24 request for Rule 16 discovery stated in so many terms.  
25 However, because the rule does not require a formal written

1 request stated in terms of we are making a Rule 16  
2 discovery, the Court does find that the request can be made  
3 in many different ways. And here the Court does first of  
4 all find that the Government has disclosed Rule 16 material.  
5 So that's part of what trickles (phonetic) the Defendants'  
6 reciprocal obligations.

7 And then the Court also does find that the parties  
8 did enter into an agreed motion for protective order, that  
9 that agreed motion for protective order did specifically  
10 reference that it was being entered into pursuant to Rule  
11 16. And, again, in that motion for protective order neither  
12 side says Defendants have made a Rule 16 request to the  
13 Government. But that motion was made pursuant to Rule 16.

14 The Court also does find that there have been some  
15 limited filings where the Court in reviewing those  
16 determines that a request was made. And in particular, in  
17 Mr. Quintanilla's motion to exclude, the Defendant does  
18 include their language that -- and I've made my own notes  
19 here, but that language does say the -- just so -- other  
20 provisions, but then the language says, Defendant requests  
21 that the Government independently produce pursuant to, and  
22 so there is a request there made for production of material  
23 that would be Rule 16 material.

24 Mr. Garcia adopted Defendant's motions there. And  
25 the Court looks at all of that together. And I understand

1 the arguments made from defense counsel about the Court's  
2 order here including the Rule 16 material. I do think that  
3 there are some items that would -- that the Government would  
4 be obligated to disclose regardless of the Court's order,  
5 regardless of the Rule 16 material that is *Brady* or *Giglio*.  
6 Obviously those have to be disclosed. Some of that could  
7 also constitute Rule 16 material.

8 So Rule 16 or the failure to request Rule 16  
9 material would not obviate the Government's need to produce  
10 some of the *Brady* or *Giglio*-type material. So there may be  
11 some overlap there. So I'm not finding that just the fact  
12 that the Government has these independent obligations then  
13 triggers the Defendants' reciprocal discovery.

14 I'm also not necessarily finding that the mere  
15 fact the Government has in our division here, and I guess  
16 throughout the district, what we refer to as an open door  
17 policy here. So -- but I do think that in this case that  
18 the Defendants' obligations to produce material have been  
19 triggered here, both because of the fact that they entered  
20 into this agreed protective order as well as in particular  
21 here for Mr. Quintanilla and Mr. Garcia, because of the  
22 request that they made here. I recognize that Mr. Cuellar  
23 did not join in Mr. Quintanilla's motion but Mr. Cuellar did  
24 join in the motion for protective order.

25 The -- sort of the Court in going through all of

1 this and evaluating all of this also contemplated, you know,  
2 if the Court determined that the Defendants had in no manner  
3 made a request for Rule 16 material then, you know, what  
4 options do we have here. And one of the options the Court  
5 thought, well, the Court could basically amend its order,  
6 withdraw its order ordering the Government to disclose Rule  
7 16 material. But quite frankly I don't think that this case  
8 would warrant that kind of order and that it would be an  
9 extreme hardship to defense counsel if they weren't able to  
10 review all the material that has been produced in this case.  
11 I don't know that all of that material -- and obviously I  
12 have not reviewed it.

13           I do not know that all of that material would be  
14 -- that the Government would be obligated to produce all of  
15 that material but for the Government's order. So the Court  
16 does believe that it has, based on what is before the Court,  
17 a record that establishes that counsel have requested Rule  
18 16 material here so that the Defendants' obligation is  
19 triggered here. Now, the question then is going to be  
20 timing, and I want to come back to that issue.

21           So, first of all, that is the Court's ruling on  
22 the Government's motion to compel, that defense counsel is  
23 obligated to produce the reciprocal material.

24           The Court wants to turn next to address a couple  
25 of the motions that I'm going to address, only to say I'm

1 not going to address them, and that is we have the motions  
2 in limine, we have also the motion -- well I guess I don't  
3 need to do anything with the 404 motion. But the motion in  
4 limine, the two of the ones that are pending now, the Court  
5 wants to address those after I address the motion for  
6 continuance. And in that regard, as to the motion for  
7 continuance, is there anything else from any counsel other  
8 than what is already in the motions?

9 MR. NOTHSTEIN: Not from the Government, Your  
10 Honor.

11 THE COURT: All right. Defense counsel.

12 MR. PENA: No, Your Honor, for Mr. Quintanilla.

13 THE COURT: Okay.

14 MR. GARCIA: No on behalf of Mr. Cuellar, Your  
15 Honor.

16 THE COURT: Mr. Vega is on mute, but I take it  
17 you're saying no, Mr. Vega?

18 MR. VEGA: Yes, Judge, I'm sorry. It was a "no"  
19 for Mr. Garcia.

20 THE COURT: All right. I -- you know, back when I  
21 gave you this April setting I was really hopeful, and I  
22 probably said as much back then, that month-to-month I am  
23 always hopeful, and at some point in time I probably should  
24 just give up being hopeful. But we have just as of -- I  
25 don't know if the order has actually been posted yet, but we

1 have just extended our order closing -- keeping the  
2 courthouse closed to the public for another two months. And  
3 Mr. Garcia I believe is the one that noted that Judge Crane  
4 has had a few trials here but they've all been one-defendant  
5 trials and they have taken one or two days, maybe I think  
6 one of them may have been a little bit longer. But I think we  
7 could do such a trial.

8           I tend to agree with counsel that there are many  
9 issues that would be presented. And I -- you know, I -- and  
10 probably like all of you and I hope like all of you would  
11 like to get this trial taken care of as quickly as possible.  
12 But I do see the issues raised. And I think Mr. Garcia did  
13 a really good job of laying out some of those issues. It  
14 would be I think a difficult situation to try to get a  
15 three-defendant trial of any sort done well right now. But  
16 I think this trial in particular would be I think very  
17 difficult to handle with the protocols that we have in place  
18 for safety measures.

19           And we've, as I've already noted, extended our  
20 order for another two months. And as much as I would like  
21 to get this case back on the docket as quickly as possible  
22 I'm thinking that we should probably set this case for trial  
23 something more like three or four months down the road  
24 because even setting it I think at the end of that two  
25 months would be pushing it for this trial. I think we could

1 safely handle a one-defendant short trial, but even when we  
2 start back up we probably will want to take care of those  
3 simpler trials. And certainly by "simpler" I don't mean not  
4 as serious but those that don't have as many defendants or  
5 as many, you know, issues to try with. So I'm thinking  
6 maybe three or four months down the road but I'm certainly  
7 willing to hear from counsel as to what you may think. And  
8 I'll start with the Government.

9 MR. NOTHSTEIN: Thank you, Your Honor. This is  
10 Peter Nothstein.

11 We certainly understand the Court's position on  
12 this and the concerns with the ability to try a case like  
13 this. The parties actually -- we spoke in anticipation of  
14 the court -- the case being continued. And defense counsel  
15 can correct me if I'm incorrect on this but I think we'd  
16 agreed that perhaps we request a date in September. I know  
17 that's a ways out, Your Honor, but I think that would give  
18 us sufficient time to ensure that the situation had changed  
19 and we could hold a case safely.

20 THE COURT: All right. I'll start with you,  
21 Mr. Pena. Do you generally agree?

22 MR. PENA: That's correct, Your Honor, we agree.

23 THE COURT: Mr. Garcia.

24 MR. GARCIA: Your Honor, we're in agreement with  
25 the Government's position.

1                   THE COURT: And Mr. Vega.

2                   MR. VEGA: Judge, we concur with a date in  
3 September.

4                   THE COURT: Okay. Well, the Court's calendar for  
5 September is still relatively open. We of course in  
6 September have that first Monday being Labor Day. We can  
7 look at starting the following Monday, the 13th, or we could  
8 -- actually we could do jury -- we could do this. We right  
9 now have -- and, you know, we can work around this or change  
10 it, but right now we have September the 8th as a regular  
11 jury selection day. That's when our jury panel is  
12 ordinarily scheduled to come in. So we could look at doing  
13 the jury selection on that day and then starting the  
14 evidentiary portion the following Monday.

15                  With these many defendants I don't know how long  
16 jury selection will take but I would expect it would  
17 probably take a good portion of the day. And then rather  
18 than starting with the testimony on Thursday, because I  
19 expect openings will take also a good portion of the day, we  
20 could just start that following Monday.

21                  Does that sound like a workable schedule for  
22 everybody? And again I'll start with the Government,  
23 Mr. Lopez, Mr. Nothstein, whomever.

24                  MR. NOTHSTEIN: Yes, Your Honor. That's agreeable  
25 to the Government, Your Honor.

1 THE COURT: All right. Mr. Pena.

2 MR. PENA: We agree, Your Honor.

3 THE COURT: Mr. Garcia.

4 MR. GARCIA: Yes, Your Honor, we're in agreement.

5 THE COURT: And Mr. Vega.

6 MR. VEGA: We're in agreement, Your Honor.

7 THE COURT: Okay. All right. So then we will  
8 proceed that way. Then jury selection will be scheduled for  
9 September the 8th at 9:00 a.m., however long that takes, and  
10 then we'll begin with the evidentiary portion of the trial  
11 on September the 13th, also at 9:00 a.m. Okay.

12 Then with that then let's work back. And so what  
13 I would like to do then is work back on some of these other  
14 issues. The first that I think we should start with is the  
15 scheduling order. And I understand the Government's  
16 position but I really see no reason having now put off the  
17 trial to September why the -- and I extended the time for  
18 filing motions to the 5th just to give me an opportunity for  
19 this hearing and sort of as a placeholder. But I don't see  
20 any reason quite frankly to stick to that date.

21 Now I expect defense counsel agrees with it. I  
22 know the Government's position was that we should sort of  
23 move forward. But with the date now for trial in September,  
24 I think that this deadline should be moved to give counsel  
25 adequate time. And I'm not necessarily basing that on the

1 argument that there's been a lot of recent material  
2 disclosed but more than the timing is not so critical now  
3 that that trial date has been moved back some. So although  
4 I understand the Government's position regarding the  
5 Defendants' original request here, if you feel otherwise  
6 aside from what you have already presented to the Court I  
7 will consider your position. But otherwise I am inclined to  
8 grant the request for that date to be extended beyond what  
9 I've already done right now. So I'm not sure Mr. Lopez or  
10 who is going to address that.

11                   Mr. Nothstein.

12                   MR. NOTHSTEIN: Yes, Your Honor. Yes, we  
13 certainly understand the Court's position on that. I think  
14 what we would suggest, though, or request, Your Honor, is  
15 that if the motion deadline is going to be moved, it not  
16 necessarily be moved to shortly before the trial. I think  
17 that what happened this week has shown us that we may have  
18 some issues that may need litigated.

19                   Mr. Garcia has noted he may have a motion to  
20 suppress. I believe there have been some requests to the  
21 FBI for documents under the *Twohey* process. In the event  
22 that those are denied, there needs to be potentially  
23 litigated on a motion to compel. And certainly I know the  
24 defense would like those documents as soon as they would --  
25 could get them. So we would just suggest that the motion

1 deadline, it just not be pushed out all the way, perhaps  
2 maybe to May or June so there could be early resolution of  
3 some issues.

4 THE COURT: Well my thought had been the latter  
5 part of June or maybe the early part of July. And along  
6 with that, one of the other things that I would like to do  
7 is set this -- set an actual pretrial conference before the  
8 Court to address I referenced earlier the motions in limine  
9 but to address those matters. I can't really rule on the  
10 motions in limine as they've been presented to me right now  
11 because without having a little bit more substance presented  
12 there, it's impossible for the Court to make a well-informed  
13 decision.

14 So my thought had been that we set that motion  
15 deadline and then we set it such that I can -- and, again,  
16 depending on the time, set then a pretrial conference soon  
17 after that motion deadline so that the Court can address any  
18 motions that have been filed that need to be addressed in a  
19 hearing. So from defense counsel, other than what you've  
20 already presented do you have something else on this issue?

21 MR. PENA: No, Your Honor. We're in agreement to  
22 extend the deadlines back. And I think a June, early July  
23 setting for the pretrial would work.

24 MR. GARCIA: I'm in agreement, Judge, with that.

25 THE COURT: Okay.

1                   MR. VEGA: I think July would work for us, too,  
2 Judge.

3                   THE COURT: Okay. And then and I'm -- I have said  
4 that I had thought, you know, a late June, early July, and  
5 part of the reason for that is because I do want to schedule  
6 a pretrial conference, again depending on what the Court has  
7 to address at that time. There may be other issues that's  
8 then have to be worked through.

9                   I don't want to -- because we're looking at  
10 September trial, I don't want to have those issues pushing  
11 all the way up to the time of trial such that then there,  
12 you know, is some other reason besides the pandemic that  
13 would necessitate another reset. So I'm inclined more to  
14 set that deadline for June and then that way we can look at  
15 July for a pretrial conference. And since that is just a  
16 deadline, not -- that does not require an appearance by  
17 anybody, that date I will just pick in June. And it's the  
18 kind of deadline that even if you have vacation plans in  
19 June, you can -- one, because everything can be filed  
20 electronically, you can still take care of that, but of  
21 course you can always file early and not have to interrupt  
22 your vacation days.

23                   And, you know, I'm just saying because people take  
24 vacations in those months. Although this pandemic has  
25 thrown so many things out of, you know, the routine that who

1 knows what will happen come June.

2           But let me then look at that deadline being set  
3 for -- I don't know. I don't think I have this correct.

4 No, there we go, okay. Let me set that deadline then for  
5 June the 21st for any pretrial motion to be filed, and this  
6 is whether it's defense pretrial motion or Government  
7 pretrial motion. And then I am going to give a response  
8 deadline for that of July the 2nd.

9           And you don't have to respond, but obviously it  
10 would be -- if you want to respond it would be easier for  
11 the Court to have that in writing even before we have a  
12 hearing.

13           And then I think, Ms. Sanchez, can we set a  
14 hearing for July the 9th. Would that be --

15           THE CLERK: Yes, ma'am.

16           THE COURT: -- any -- okay. So let me set a  
17 pretrial conference hearing for July the 9th at 9:00 a.m.  
18 And at that time then the Court would consider if any of  
19 these motions require a hearing, the Court would consider  
20 that.

21           If there is a motion to suppress filed that  
22 requires a hearing, that would be the date for that. If it  
23 requires any witnesses to be called, you would be expected  
24 to have your witnesses ready to go on that date. That will  
25 be in-person, regardless of where we are as a whole. I want

1 to have that hearing in person. If, heaven forbid, that  
2 things are a lot worse than they are right now, if we are  
3 unable to have an in-person hearing then the Court will let  
4 you know ahead of time. But I expect that to be in person.

5 MR. NOTHSTEIN: Your Honor, on that note, if I  
6 may, I am set for about a month-long trial in July in  
7 Tallahassee, Florida. So I don't know if the Court would  
8 consider perhaps maybe doing the pretrial in early August.  
9 If not, if I could just get permission, Your Honor, to  
10 participate by phone as I will be in Florida for that trial.

11 THE COURT: Well you do have able counsel here.  
12 The Court will give you the option of calling in, but I'm  
13 not promising that you'll be the lead from the Government.  
14 I may expect counsel who is present to be the lead on that.  
15 But I don't want to put it off any further than July the  
16 9th.

17 MR. NOTHSTEIN: Yes, Your Honor.

18 THE COURT: Okay. So that addresses then the  
19 motion deadline. I've already addressed the motion to  
20 compel but I haven't set a deadline as far as the counsels'  
21 response to that. In that regard I am hesitant to give you  
22 a hard and fast deadline because of course it is an ongoing  
23 obligation. So in that regard what I would say is that to  
24 the extent that defense counsel have material that is  
25 responsive to Rule 16, and I know that from the filings I

1 understand that some counsel have indicated that they do  
2 have some, that that should be disclosed.

3 And I think if I give you two weeks to, you know,  
4 get that taken care of, what you have already, is there any  
5 reason why that couldn't be done? From defense counsel who  
6 have indicated that they may have something.

7 MR. PENA: Your Honor, from Quintanilla, the  
8 concern I have -- and I think the two weeks will work for us  
9 as long as a continuing obligation. The concern I have is  
10 the methodology. So if we have materials that are in  
11 different formats, my concern is we -- I don't have a  
12 resource to duplicate, make copies, and then produce those.  
13 We could make those items available for the Government, they  
14 could come inspect those items at the office. And as long  
15 as that is consistent with the Court's order then we can do  
16 it in the two weeks.

17 THE COURT: And, yes, and I would also encourage  
18 of course one -- and some -- you may have some documents,  
19 and I'm not saying necessarily so, but if you have some  
20 documents that have sort of been generated from the  
21 Government, obviously you don't have to disclose that to the  
22 Government, what they have disclosed to you already. So I  
23 don't know when you're speaking of the manner of disclosure  
24 here whether we're speaking of volumes and volumes and  
25 volumes or more limited.

1           I would say if it is more limited, you know, a few  
2 pages here and there, that that can be copied. And I think  
3 two weeks would be adequate. But if we are speaking of  
4 voluminous disclosures here then I have no difficulty with  
5 what you have proposed, Mr. Pena. I don't know if anybody  
6 else has the same situation. But, Mr. Lopez, I know that  
7 the Government in many instances produces it electronically  
8 to defense counsel so in that regard I also do think that if  
9 you have it in electronic format, Mr. Pena and Mr. Garcia  
10 and Mr. Vega, the same applies to you, that the Government  
11 can provide you with the disk or USB or something such that  
12 it could be produced that way as well.

13           Does anybody have any issue with that?

14           MR. LOPEZ: No, Your Honor. And one of the things  
15 that the Government can do which I have done with other  
16 defense counsel here in this -- in the McAllen Division is  
17 we have USA Effects, which is a discovery portal, which I  
18 believe would allow them to upload electronic data that we'd  
19 be getting in real time with the DC attorneys as well, Your  
20 Honor.

21           THE COURT: And I'm not ordering anybody if it  
22 isn't already in electronic format. But I know these days  
23 almost everything is. I mean, you get bank statements in  
24 electronic format, you get minutes from meetings. I mean,  
25 almost everything else these days is done that way. So if

1 it's already in that format I would certainly encourage you  
2 to look at producing it that way; might save you some time  
3 and trouble. If you only have hard copies, I am not  
4 ordering you at this stage to put that into electronic  
5 format because I know that can be time-consuming depending  
6 on the volume.

7 MR. PENA: And, Your Honor, then can I bring up  
8 one thing? Since the Court has ordered reciprocal  
9 discovery, there -- in the voluminous records that we  
10 received from the Government, there are multiple items in  
11 that. And though they did produce items to us digitally,  
12 they made other items only available for inspection or at  
13 the FBI building or at the Government offices, and so it's  
14 made it very difficult for the defense in that we can go  
15 over to those locations, we cannot take any electronics, we  
16 can't take hard copies.

17 And so if the Court is going to order the defense  
18 to produce some of these items to the Government, can the  
19 Court order the Government then to make those items  
20 digitally available to the defense?

21 THE COURT: I would say the same thing. I would  
22 agree with Mr. Pena. And, Mr. Lopez, especially, you know,  
23 this is a document-intensive case. And while it's been a  
24 long time since I practiced, I do know, you know, that if  
25 you -- and, you know, I tell a lot of people that I still

1 like paper. I mean, if I'm reading PSR's, I have the  
2 written paper in front of me even though they're all  
3 electronic because I am making notes on that. I'm, you  
4 know, comparing one thing to the other.

5 You know, there really is an advantage to having  
6 the documents available to you at any time of the day or  
7 night. And I suspect that these attorneys are not the kind  
8 that keep just 8:00 to 5:00 hours. And I doubt that the  
9 Government is letting them come in at 11:00 o'clock at  
10 night.

11 So, Mr. Lopez, I would say if those, they're in  
12 electronic format, that the same thing would apply to the  
13 Government in that I really do feel that this is something  
14 that, you know, counsel should have access to that at  
15 whatever time counsel wants to look at it rather than having  
16 to go over to the FBI building.

17 MR. NOTHSTEIN: Your Honor, if I may be heard on  
18 that. If the Court recalls, when we initially produced our  
19 discovery, there was a sort of portion of it that we  
20 produced and gave electronic copies to the defense. And  
21 then there was another portion that we made available for  
22 review at the U.S. Attorney's Office. And then shortly  
23 after that, when it was brought to the Court's attention I  
24 think in the summer of 2019, Your Honor actually ordered us  
25 to produce all of the documents that were available for

1 review to the defense, which we have done.

2 THE COURT: Okay.

3 MR. NOTHSTEIN: And since then we have produced  
4 everything straight to the defense. In fact, we have  
5 provided -- we have some large hard drives so we could give  
6 them copies of things like iPhones that were imaged, email  
7 accounts. That's all been provided. I'm not aware of  
8 anything that is currently just at the FBI or the U.S.  
9 Attorney's Office the defense counsel needs to review. And  
10 we've received, as far as I'm aware, no requests to review  
11 anything as yet.

12 So if there is something Mr. Pena doesn't have, we  
13 are more than happy to provide a copy of it. But there's  
14 nothing we're withholding for that purpose. So we agree  
15 with Your Honor, we think that's the right way to do it and  
16 we will do that. We just aren't aware of anything that's  
17 subject or that needs to be turned over at this point.

18 THE COURT: So --

19 MR. PENA: And, Your Honor, we will work with  
20 Mr. Nothstein on that issue because there are some items we  
21 identified. I'll communicate with them and if we have any  
22 issues, we'll come to the Court.

23 THE COURT: That's the best way to approach that.  
24 Okay. So then of course after that two-week period, if  
25 there is anything new -- and this is true again to the

1 Government as well, that obviously this is a continuing  
2 obligation all the way up to and including through the  
3 trial. So thereafter it would just be produced once you  
4 have a sense of, you know, this is something that is  
5 discoverable in accordance with the Court's order here. All  
6 right, so that takes care of that issue. Then --

7 MR. GARCIA: Your Honor, if I may?

8 THE COURT: Yes.

9 MR. GARCIA: And I apologize.

10 THE COURT: Yes.

11 MR. GARCIA: Your Honor, does that include the  
12 information as it relates to consulting experts that have  
13 not completed their investigation to this point?

14 THE COURT: No. Consulting -- well, first of all,  
15 consulting experts, if they're just consulting experts, and  
16 I'll -- I go back and re-read the rules all the time. But  
17 if I recall correctly those do not have to be disclosed,  
18 okay. And if you have a consulting expert and at some point  
19 in time then you decide to use that expert at trial, then at  
20 that point in time that's when the disclosure has to be  
21 made. And I trust that all counsel are professional, that  
22 they do in fact disclose in a timely fashion when and if  
23 they make that determination, that counsel would not just  
24 hold off unreasonably, so.

25 MR. GARCIA: Certainly, Your Honor.

1                   MR. PENA: And, Your Honor, and to clarify on that  
2 issue on the experts, neither side, neither the Government  
3 nor the defense, have designated any experts because we  
4 don't have designation deadlines. And so just to clarify as  
5 far as any designation of the experts and then producing any  
6 materials reviewed by the experts, would that occur when we  
7 submit our witness list? But I assume that's when we would  
8 finally disclose those witnesses.

9                   THE COURT: So let me come back to that because  
10 that is one of the other issues that is before the Court as  
11 well. And let me back up also a little bit that I've  
12 indicated the Court's finding that defense counsel have made  
13 a Rule 16 discovery but I did indicate also that while the  
14 Government has produced Rule 16 material, the defense  
15 obligation is triggered when the Government does that. So  
16 if they haven't produced expert material, then the defense  
17 obligation is not yet triggered. But if they do, then that  
18 is triggered by the Government producing that material.

19                   So with that then let's go ahead and talk about  
20 the disclosure of the witness list and exhibits. And I have  
21 gone through the defense motion and I do understand. And I  
22 do agree that the Government has the obligation here to  
23 prove the Defendant guilty as to each charge and defense  
24 does not have any obligation. But this is the kind of trial  
25 that can very quickly get very messy I think if we don't all

1 try to work together in those areas where we can. So while  
2 I understand the defense motion asking the Court to  
3 reconsider its order for disclosure of witnesses and  
4 exhibits, I am not inclined to withdraw that motion. I do  
5 think that that deadline -- and I have it noted here that  
6 that deadline does need to be moved closer to trial. But I  
7 do still believe that that deadline or that requirement to  
8 disclose on both sides is necessary because we will need to  
9 try and do everything that we can to move this trial  
10 smoothly.

11 And without in any way sort of impinging on the  
12 Defendants' Sixth Amendment rights, I want to make sure that  
13 we can move this trial smoothly. So as to the motion to  
14 reconsider, while I do reconsider, I am not withdrawing the  
15 Court's order to disclose witnesses and exhibits or to  
16 exchange those. But I will move that closer to trial. So  
17 in that regard, originally I had it roughly a month out from  
18 the trial date. I think something along those lines would  
19 still work. And that can, you know, move it either way a  
20 little bit if counsel feels that it should be something  
21 either a little bit out or a little bit closer, I can  
22 certainly consider that.

23 But the order will still remain. So I guess from  
24 the Government, is there -- Government have a position as to  
25 timing?

1                   MR. NOTHSTEIN: Your Honor, I think that we would  
2 ask for maybe a month before trial.

3                   THE COURT: All right. From defense counsel.

4                   MR. PENA: (No audible response).

5                   THE COURT: Mr. Pena, you went on mute, I'm sorry.  
6 And before you -- actually, before I hear from you,  
7 Mr. Pena, one of the things that -- and it did sort of as I  
8 was going through these motions, it did occur to me that one  
9 thing I could do that maybe -- and I don't know if the  
10 defense counsel feels that this really offers them any kind  
11 of relief, but it did occur to me that since your strategy  
12 may depend on what the Government is doing, that we could  
13 get the Government's list and witnesses and then a week or  
14 two later then have defense counsel disclose their exhibits  
15 and witness list.

16                  And, again, it's not necessarily we're giving you  
17 all the relief that you want but I think it maybe gives you  
18 a little bit of relief.

19                  MR. GARCIA: Your Honor, you read my mind. That  
20 was exactly what I was going to request so thank you very  
21 much.

22                  THE COURT: Okay. So then since we have a  
23 September -- what did I say, September what trial date?

24                  THE CLERK: September 8th.

25                  THE COURT: September 8th trial date, then we

1 would look -- let's look at July the -- I mean, sorry,  
2 August the 9th for the Government to disclose their witness  
3 list and exhibit list. And on the witness list, I will ask  
4 the Government also, even though they will not be strictly  
5 bound to this, to list the witnesses in the anticipated  
6 order.

7 Now, again, I know things change as you get closer  
8 to trial. And then even during the trial itself things can  
9 develop where you want to reorder your witnesses. But I  
10 will ask that you give some thought and then list those  
11 witnesses in the anticipated order that you are going to  
12 call them. I think that will help defense start to get  
13 ready for their own case. So that will be August the 9th,  
14 so then I will have a deadline for the defense to disclose  
15 witnesses and exhibits for the 23rd of August.

16 And in that regard, if you anticipate calling  
17 anybody other than what the Government has, that's who you  
18 should list. If your list is going to be just, you know,  
19 the Government's witnesses and for cross-examination or even  
20 in your case-in-chief, then you can just indicate as much.  
21 But you should provide a list of some sort.

22 MR. GARCIA: Thank you, Your Honor.

23 THE COURT: All right. Okay. So that addresses  
24 that motion. Then I think I covered what I had from the  
25 filings at this point. If I've overlooked something,

1 certainly bring it to my attention now.

2 MR. NOTHSTEIN: Your Honor, this is Mr. Nothstein.  
3 I did want to actually just raise one point on the expert  
4 witness issue. And Mr. Pena is correct, we have not turned  
5 over any expert witness disclosures. That's because we are  
6 not going to call an expert witness. We have no intent on  
7 calling experts. So that being the case, Your Honor, I  
8 believe that satisfies our requirement to disclose under  
9 Rule 16(a)(1)(G). And therefore since we have requested  
10 reciprocal discovery that we would be entitled to the  
11 Defendants' disclosures under Rule 16(b)(1)(C).

12 THE COURT: Okay. I don't have the rules  
13 memorized but the rule provides that if the request is made,  
14 and the Court has determined that a request has been made  
15 for Rule 16, but I thought the rule said that if the  
16 Government discloses --

17 MR. NOTHSTEIN: And I guess we're in a little  
18 difficult situation, Your Honor, to the extent that request  
19 has been made from defense to know of our expert  
20 disclosures, I'm representing now there is no expert  
21 disclosure. So our disclosure is nothing essentially. And  
22 that sort of satisfies our obligation. It's the only way we  
23 can do it.

24 THE COURT: What I -- and what I'm saying is that  
25 in those cases where the Government's saying we're not

1 calling witnesses, I don't know that the rule is triggered.  
2 I'm looking at the rule as we speak. Because the rule is  
3 that the Government must give a written summary, and then if  
4 the defendant has made that request -- yeah, it's a little  
5 -- and let me think about that because the rule provides  
6 that, you know, if the defendant requests, then the  
7 Government has to give a written summary. And then the  
8 reciprocal rule is that if the Government has requested and  
9 the Government has complied, then the defense obligation is  
10 triggered.

11           And I'll look at the notes and see if the notes  
12 indicate what happens when the Government says we have  
13 nothing to give, whether that triggers it. Off the top of  
14 my head I'm not yet inclined to say they have an obligation  
15 to disclose when the Government is saying we have nothing to  
16 disclose, so.

17           MR. NOTHSTEIN: Yes, Your Honor.

18           THE COURT: Okay. Any other issues then that have  
19 been presented to the Court that I haven't addressed?

20           MALE SPEAKER: Your Honor, one -- go ahead,  
21 Carlos, go ahead.

22           MR. GARCIA: Briefly, Your Honor, and in spirit of  
23 the Court trying to make sure that things go smoothly, as  
24 smoothly as possible, we've indicated to the Government of  
25 our need or of our intent, not only of myself but other

1 counsel, in having agents for the Government that are --  
2 that have relevant information be called to testify. And  
3 the Government has indicated -- based our communication it  
4 appears that they're of the position that, you know, once  
5 they call them, if they're going to call them to testify,  
6 then they're going to be released and it's our obligation to  
7 then comply with the *Twohey* regs. And we're willing to do  
8 and go through the hoops.

9                 But as the Court is well aware, as trials normally  
10 go in our division, the Government has always been more than  
11 willing to have agents available to testify that have facts  
12 that are specific to a particular matter. But I just want  
13 to get some clarification on the record from the Government  
14 if the Government is still in the position that, you know,  
15 the *Twohey* regs need to be complied with on their own  
16 witnesses that they're going to call. And so at a minimum  
17 we want to get them on the record to state their position.  
18 That's all I have, Judge.

19                 THE COURT: All right. Mr. Nothstein.

20                 MR. NOTHSTEIN: Your Honor, some of the witnesses  
21 that were noticed are not witnesses that we intend to call.  
22 So those witnesses for certain --

23                 THE COURT: Listen to what Mr. Garcia said.  
24 Mr. Garcia said those Government witnesses who are agents  
25 that the Government does intend to call. Those are the ones

1 he's addressing right now.

2 MR. NOTHSTEIN: We do, Your Honor, we do -- it is  
3 our position that the defense still has to comply with the  
4 Twohey regulation. And in part, Your Honor, that is because  
5 it's about the scope of the questioning. So obviously we  
6 put on a witness that would need to be cross-examined about  
7 his direct testimony or his direct examination testimony.  
8 But we believe that Mr. Garcia wants to call some of these  
9 witnesses for other purposes and to go into issues that are  
10 not relevant at trial and so things that we are not putting  
11 them on for essentially. So we do -- it is our position  
12 they have to comply with Twohey regulations.

13 THE COURT: Well, one thing is that I will make  
14 the determination about what is relevant at trial, not the  
15 Government. And then the other part of that goes to the  
16 manner in which the Court conducts these proceedings. My  
17 practice has always been -- I guess this is a good time for  
18 counsel to be sort of reminded of that. My practice has  
19 always been that when the Government presents a witness,  
20 then the defense cross-examines.

21 I allow defense counsel at that time to go beyond  
22 the direct examination because I have found over the course  
23 of my time that it saves money as opposed to requiring the  
24 defense to limit themselves to cross-examination on issues  
25 brought up on direct, or the ones that flow from that, and

1 then having to recall that witness later on in the  
2 case-in-chief. Now, they can choose to do so but if they  
3 want to go beyond the scope of direct examination, again,  
4 provided I determine that it is relevant, I allow them to do  
5 that. So in that regard --

6 THE CLERK: Judge, I'm sorry, Mr. Pena got  
7 offline.

8 THE COURT: Oh, we lost Mr. Pena.

9 THE CLERK: He's about to be back.

10 THE COURT: Okay, sorry.

11 (Pause)

12 MALE SPEAKER: He's back on.

13 THE COURT: I'm lost -- we lost you briefly, I'm  
14 not sure what you heard, but what I was explaining,  
15 Mr. Pena, is my practice of allowing defense counsel to go  
16 beyond direct examination after the Government completes  
17 their direct examination and for cross-examination purposes,  
18 that I allow defense counsel to go beyond the scope of  
19 direct because I found that that saves time and that way  
20 rather than having to then move on to another witness and  
21 then for a defendant to have to recall that particular  
22 witness in their case-in-chief, which I found always ends up  
23 being much longer than if we just proceeded.

24 So even though, Mr. Garcia, you may be saying that  
25 you would be releasing them after you have completed your

1 examination, I do have control of the courtroom and so keep  
2 that in mind as you work through these issues. At this  
3 point in time I am not saying that defense counsel does not  
4 have to comply with the *Twohey* requirements. But I am  
5 saying that for purposes of how we proceed at trial that I  
6 will give counsel an opportunity to do their full  
7 examination after the Government completes its direct  
8 examination.

9 Now, they can choose to do only limited cross to  
10 what was brought up in direct and recall that witness in  
11 their case-in-chief but I will not obligate them to do it  
12 that way.

13 MR. NOTHSTEIN: Yes, Your Honor. And I would just  
14 note for the Court, the six witnesses that Mr. Garcia has  
15 noticed up that he would like to examine, he -- only one of  
16 them is likely trial witness.

17 THE COURT: Okay. So anything else on that issue,  
18 Mr. Garcia?

19 MR. GARCIA: No, Your Honor. We'll file the  
20 appropriate paperwork at the time of our filing for the --  
21 any motion if it is filed beforehand, Judge. Thank you.

22 THE COURT: Okay. Then do we have any other  
23 issues that anybody wants to address?

24 MR. VEGA: Judge, we have some agents that are not  
25 on the Government's witness list but they did interview

1 Mr. Danny Garcia and also the deceased, Mr. Lopez. The  
2 Government's going to require us to go through the full  
3 *Twohey* regs also. I mean, they are fact witnesses. We're  
4 not going to ask anything beyond the scope of this case but  
5 yet they're still requiring us to go through all these  
6 requirements. I believe in this district, Judge, we tend to  
7 follow the due process rules. They're our witnesses, the  
8 Government should make them available to us if requested.

9 THE COURT: I would hope due process is  
10 everywhere. But, Mr. Vega, what I'm saying is at this point  
11 in time, since the matter wasn't presented to me before  
12 today, I don't like to if I don't absolutely have to sort of  
13 just to make a ruling off the cuff. If you -- I'm happy to  
14 address that if you -- and it can be done much earlier than  
15 the pretrial motion deadline I gave, and I'm happy to  
16 address that.

17 But I would prefer that you file something before  
18 the Court so that I can then give it due consideration. And  
19 then I can always schedule a hearing earlier if I need a  
20 hearing earlier. But you also know that I often will rule  
21 on the motions as they are presented to the Court. So if --  
22 I'll say this. If any counsel, and this is Government or  
23 defense, has any issue that needs my attention, as soon as  
24 you know you have an issue bring it to the Court's  
25 attention. It would be better than waiting until the

1 deadline for motions to file everything at that time,  
2 especially if it will help you prepare towards trial. And  
3 then if a motion is filed by whether it's Government or  
4 defense, I will institute a ten-day response time.

5 So I will wait at least ten days to get a  
6 response. If I get no response then I will rule on the  
7 motion if I think I can on the motion itself. If I think I  
8 need to have a hearing, then I'll schedule a hearing. But  
9 that'll give you an opportunity to file these matters well  
10 before the deadline if you want the Court's attention before  
11 then.

12 And certainly it sounds to me, Mr. Vega, like this  
13 may be one of those if you can't work out something with the  
14 Government.

15 MR. VEGA: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. VEGA: That's all we have on that, Judge.

18 THE COURT: All right. Any -- let me make sure  
19 that I didn't miss anything here. If counsel thinks I have,  
20 I'm happy to hear it now.

21 MR. NOTHSTEIN: Nothing from the Government, Your  
22 Honor. Thank you.

23 MR. PENA: Nothing from Quintanilla, Your Honor.

24 MR. GARCIA: Nothing on behalf of Mr. Cuellar,  
25 Your Honor. Thank you.

1                   THE COURT: Okay.

2                   MR. VEGA: Judge, we have nothing else on behalf  
3 of Mr. Danny Garcia.

4                   THE COURT: Okay. All right. Then I think that  
5 does take care of everything. The one other thing that I'll  
6 say that we'll address when we have that pretrial that is  
7 scheduled already, again, hopefully at that time things are  
8 much better as to the safety protocols. But one of the  
9 things at that point in time that I will do with counsel is,  
10 and part of the reason why I want to have this in person, is  
11 that if we have to still have some safety measures then I'll  
12 sort of walk you through that so that you have a good sense  
13 of what you can expect for the actual trial itself. All  
14 right.

15                  MR. VEGA: Judge, I'm sorry to interrupt, but  
16 usually you have us -- do we have to file a written motion  
17 to allow us to bring computers into your courtroom?

18                  THE COURT: No. You may do so for trial purposes.  
19 And that's certainly something that I think each one of you  
20 needs to start thinking about because, again, I expect that  
21 this being a document-driven case, that you make sure that  
22 if you are working with our monitors, the projector, all of  
23 that, that you have IT people that you know will be able to  
24 help you make sure that this is set up.

25                  We have our IT people and they will be happy to

1 meet with you at some point in time before the trial to make  
2 sure that what you have is compatible with what we have. I  
3 get very impatient in a trial if we're wasting too much time  
4 trying to get exhibits up on screens. And the one thing  
5 you'll learn from me for some of you have tried cases in  
6 front of me, others have not, but the one thing you'll learn  
7 is that during the trial I hate to waste the jury's time or  
8 mine for that matter or yours.

9 I mean, I don't like to waste anybody's time. So  
10 those issues should definitely be addressed beforehand.

11 All right. If there's nothing else at this time  
12 then you may each be excused. And thank you each for your  
13 attention to these matters.

14 (Proceedings adjourned at 3:58 p.m.)

15 \* \* \* \* \*

16 I certify that the foregoing is a correct  
17 transcript to the best of my ability due to the condition of  
18 the electronic sound recording of the ZOOM/telephonic  
19 proceedings in the above-entitled matter.

20 /S/ MARY D. HENRY

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